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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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XL SPECIALTY INSURANCE COMPANY,

Civil Action No.

Plaintiff,

-against-

COMPLAINT

MSC MEDITERRANEAN SHIPPING
COMPANY (USA), INC.,

Defendant.

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Plaintiff, XL SPECIALTY INSURANCE COMPANY (“XL Specialty”) as subrogee of Beaver Street Fisheries, by and through its attorneys, RUBIN, FIORELLA, FRIEDMAN & MERCANTE LLP, as and for its complaint against defendants MSC Mediterranean Shipping Company (USA), Inc. (hereinafter “MSC”), alleges upon information and belief, as follows:

1. At all times hereinafter mentioned, plaintiff XL Specialty was and now is an insurance company organized and existing by virtue of the laws of the United States.
2. XL Specialty is the shipper, consignee, owner or insurer of the shipment at issue herein, and brings this action on its own behalf and as agent and trustee on behalf of and for the interests of all parties who may be or become interested in the shipment, as their respective interests may ultimately appear, and XL Specialty is entitled to maintain this action.

3. At all times hereinafter mentioned, defendant, MSC, was and now is a corporation or other business entity organized and existing by virtue of the laws of the United States, and was and is still doing business within the jurisdiction of this Honorable Court as a common carrier and/or bailee of merchandise for hire in interstate and international commerce.
4. This is an admiralty and maritime dispute within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the Court's admiralty jurisdiction pursuant to Article III, Section 2 of the Constitution of the United States and 28 U.S.C. § 1333.
5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1333, as this case arises out of a contract for the shipment of goods overseas and this satisfies the requirements for federal admiralty jurisdiction.
6. On or about January 20, 2018, PT. Kelola Mina Laut delivered to MSC, for good and valuable consideration, a shipment of 2,900 Cartons of frozen shrimp in good order and condition, valued at \$202,605.78 (the "shipment"), suitable in every respect for the intended transit for which MSC received, accepted and agreed to transport, by its employees, agents or servants, from Surabaya, Indonesia to Jacksonville, FL.
7. On March 5, 2018, the full shipment was lost overboard and never delivered to Beaver Street Fisheries.
8. By reason of the premises, MSC breached, failed and violated its duties and obligations as a common carrier and/or bailee, by negligently discharging, storing, guarding and/or caring for the shipment described herein, and, by failing to perform its services in a proper and workmanlike manner, and breached its express and implied warranties of workmanlike service.
9. Plaintiff has duly performed all duties and obligations on its part to be performed.

10. By reason of the premises, plaintiff has sustained damages or nearly as same now can be estimated, no part of which has been paid, although duly demanded, in the amount of \$202,605.78.

WHEREFORE, plaintiff XL Specialty Insurance Company, respectfully requests the following:

- a. That a judgment be entered in favor of XL SPECIALTY INSURANCE COMPANY and against MSC MEDITERRANEAN SHIPPING COMPANY (USA), INC. , in the amount of \$202,605.78., with interest, attorney fees and the costs and disbursements of this action; and
- b. For such other, additional, and further relief the Court deems just and equitable.

Dated: New York, New York
November 26, 2019

**RUBIN, FIORELLA, FRIEDMAN
& MERCANTE LLP**

By: 

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